

REMARKS

The issues outstanding in the Office Action of May 21, 2009, are the objection to the specification and claims, and the single rejection under 35 U.S.C. 103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Specification

A substitute specification is provided herewith, as requested. The pages which were marred in transmission previously have been replaced by clean pages, it is hoped. With respect to the discussion of trademarks, for example at pages 8 and 10 of the specification (see page 3 and 4 of the Office Action) it is submitted that the trademarks are properly identified with trademark symbol, and moreover are identified by generic language. It is thus submitted that no objection is warranted in this regard.

Claim Objections

The claim objections at page 4 of the Office Action are noted. Appropriate changes have been made to the claims, which do not change the scope thereof, either literally, or for purposes of the doctrine of equivalents. Withdrawal of this objection is respectfully requested.

Rejection Under 35 U.S.C. 103

Claims 1, 2, 6, 7, 9, 14 and 16 have been rejected under 35 U.S.C. 103 over Sanga taken with Bagala, Seo and Rick. Reconsideration of this rejection is respectfully requested.

Sanga discloses reversibly thermochromic light transmitting pigments, which may have, as a substrate, a metallic luster pigment based on synthetic mica, or bismuth oxychloride, among others. The substrate may be coated by a metal oxide. Although patentees note that the materials may have the "metallic luster of silver, gold" etc., coating of the materials with an actual silver compound, much less silver oxide, is not disclosed, as admitted in the Office Action at page 6. In order to remedy this deficiency, however, the Office Action cites Bagala, arguing that this patent teaches pigments constructed with "a reflecting layer, i.e., silver." In fact, Bagala teaches effect pigments which are coated with silver metal, and in order to deposit such metal, silver nitrate is employed. Acknowledging that the reference does not teach deposition of silver oxide, at page 7, the Office Action concludes that it is "not inventive to discover the optimum ranges or regimens by routine

experimentation when general conditions of a claim are disclosed in the prior art.” To the contrary, the general conditions of the present claim, in which a layer of silver oxide is present, are simply not disclosed by this combination of references.

In order to further support the objection above, the Office Action argues that the present specification teaches that pigments with anti-microbial activity can be obtained by substituting silver oxide by silver nitrate. However, Applicants’ own specification is not available as a reference against them. Moreover, even assuming, arguendo, that substitution of silver nitrate for silver oxide would be obvious in the production of an antimicrobial pigment, none of the cited references disclose anti-microbial pigments, so the motivation for such substitution is absent. Moreover, it is silver that is disclosed in Bagala, not silver nitrate as a layer on the pigment. For these reasons alone, it is submitted that the rejection is in error, and should be withdrawn.

It is further respectfully submitted that it would not have been obvious to one of ordinary skill in the art even to combine Sanga and Bagala, inasmuch as each is directed to a significantly different type of pigment. Sanga is disclosed to reversibly thermochromic, light transmitting pigments, while Bagala is directed to effect pigments. In Bagala, the substrate, which the Office Action argues to be the same as that disclosed in Sanga, is characterized as a material of “high transparency, strong reflectance and strong chroma”, see col. 5, lines 5-6. However, Bagala teaches that the silver-coated mica pigments exhibit a different color, see col. 10, lines 25-42, indicating that the pigment is a lustrous, opaque and silver-colored material, and/or that the product pigment exhibits a color flop from blue to violet, thus considerably different from high transparent materials. One of ordinary skill in the art would hardly combine such a color changing material with the fragile, sensitive thermochromic pigments of the primary reference. It is therefore submitted that this is additional basis upon which the rejection should be withdrawn.

The claims of the application are submitted to be in condition for allowance. However, should the Examiner have any questions or comments, he is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Harry B. Shubin/

Harry B. Shubin, Reg. No. 32,004
Attorney for Applicants

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
Arlington Courthouse Plaza I
2200 Clarendon Boulevard, Suite 1400
Arlington, Virginia 22201
Direct Dial: 703-812-5331
Facsimile: 703-243-6410

Attorney Docket No.: MERCK-2686-1

Filed: August 21, 2009